

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

Crl. Revision No.388 of 1996.

DECIDED ON : 21.7.2009.

**Employees State Insurance Corporation
through its Regional Director,
Madhya Marg, Sector 19-A, Chandigarh.**

Petitioner

VERSUS

Ramesh Kumar Ohri and another.

Respondents.

CORAM HON'BLE MR. JUSTICE JORA SINGH

Present: Mr. B.S.Bhalla, Advocate,
for the petitioner.
Mr. M.L.Gulati, Advocate, for
the respondents.

JORA SINGH,J.

This Criminal Revision was instituted by Employees State Insurance Corporation to impugn the judgment dated 27.2.1996 rendered by Chief Judicial Magistrate, Gurdaspur.

Complaint under Section 85(g) of the Employees' State Insurance Act, 1948 (hereinafter referred to as "the Act") was instituted by Employees State Insurance Corporation through its Insurance Inspector/ Manager, Local Office, Dhariwal, on the allegations that accused Rakesh Kumar Ohri (Proprietor) was and continued to be the Principal Employer of M/S. Raman & Company (Rice Mill), Awankhe Gate, near D.A.V.School, Dina Nagar in terms of

Section 2(17) of the Act and at the time of committing of offence was in-charge and was responsible to the establishment for the superannuating of control of the business of the establishment. The accused has failed to produce the record, namely, wages/salaries registers, contribution registers, return of contributions, registers of employees' under Regulation 32 and other record pertaining to the payment of contributions, Inspection book, payment vouchers and ledgers and cash books for inspection before Insurance Inspector on 10.8.1993 and 22.9.1993 for the period from 1.7.1988 to 12.10.1992 and 13.10.1992 onwards as required under Section 45 of the Act. Due to non-production of the record as mentioned above, accused has committed an offence punishable under Section 85(g) of the Act.

Accused was summoned to face trial.

Notice under Section 85(g) of the Act was issued. Accused pleaded not guilty and claimed trial. Accused moved an application dated 11.2.1995 for dropping the proceedings on the allegation that complaint was instituted after the expiry of period of limitation, as per Sections 468 and 204 Cr.P.C.

Notice was issued to the complainant. Ultimately, learned Chief Judicial Magistrate, opined that complaint is not maintainable being time barred and was dismissed.

Feeling dissatisfied with the order dated 27.2.1996 this revision petition was instituted.

I have heard learned counsel for the parties.

Learned counsel for the revisionist argued that main complaint was presented on 10.11.1993. After summoning, accused had appeared on 23.11.1994. Notice under Section 85(g) of the Act was issued on 5.1.1995. Under the Act, no limitation is provided. Maximum sentence under Section 85(g) of the Act is two years and to pay a fine of Rs.500/-. Contribution is every month. Due to non-deposit of contribution offence under Section 85(g) is a continuing offence. Learned counsel for the revisionist cited **ESIC Vs. C.C.Santhakumar**, JT 2006(10) SC 549.

Learned counsel for the respondent argued that as per Section 468 Cr.P.C. complaint was not within limitation. Court has no power to take cognizance beyond the expiry of limitation. Due to non-production of record, complaint should have been filed within six months. As per the Act, question of limitation can be agitated at any stage even after cognizance is taken. In the present case, cognizance was taken on 5.1.1995 when notice was issued.

As per allegation of the revisionist, respondent failed to produce record pertaining to the payment of contributions, inspection book, payment vouchers, ledgers and cash book etc for investigation for the period from 1.7.1988 to 12.10.1992 and 13.10.1992 onwards as required under Section 45 of the Act. Complaint was presented in the Court of learned Chief Judicial Magistrate, Gurdaspur on 10.11.1993.

Notice was issued to the accused to appear in the Court. After appearance of the accused, on 23.11.1994, notice under Section 85(g) was issued on 5.1.1995. Record is silent as to on which date application for dropping proceedings under Sections 468 and 204 Cr.P.C. were presented.

Due to non-production of record, accused are liable for the commission of offence punishable under Section 85(g) of the Act.

Section 85(g) of the Act is reproduced as under:-

“(g) is guilty of any contravention of or non-compliance with any of the requirements of this Act or the rules or the regulations in respect of which no special penalty is provided.

(he shall be punishable—

(i) where the commits an offence under clause (a), with imprisonment for a term which may extend to three years but-

(a) which shall not be less than one year, in case of failure to pay the employee’s contribution which has been deducted by him from the employee’s wages and shall also be liable to fine of ten thousand rupees;

(b) which shall not be less than six months, in any other case and shall also be liable to fine of five thousand rupees.

Provided that the Court may, or any adequate and special reason to be

recorded in the judgment, impose a sentence of imprisonment for a lesser term.

- (ii) where he commits an offence under any of the clauses (b) to (g) (both inclusive), with imprisonment for a term which may extend to one year or with fine which may extend to four thousand rupees, or with both.)

In **E.S.I.C. v. C.C. Santhakumar**, JT 2006 (10) SC 549, the Hon'ble Supreme Court observed as under:-

“21. It is clear, therefore, that the right of the Corporation to recover these amounts by coercive process is not restricted by any limitation nor could be the Government by recourse to the rule-making power prescribed a period in the teeth of Section 68.

22. In the above judgment this Court has clearly held that Section 68 of the Act empowers the Corporation to resort to coercive process, to recover the contribution from the employer as if it were an arrear of land revenue and the said right is not restricted by any limitation. This is a crucial Section.

23. Similarly, no limitation is provided in Chapter VII. It deals with the imposition of penalty or levy of damages upon failure to pay

contributions. It consists of Sections 84 to 86A.

24. When the Act itself does not provide for any limitation on the Corporation right to claim, the employers cannot rely upon Regulations 32 to 66, dealing with the period for maintenance of registers, to imply any limitation.

Gurdeep Singh Vs. State and others,

1990(3) 289 was relied by the learned trial Court for disposing of the application for dropping proceedings wherein it was held that:

“A. Delhi Police Act, 1978, Sections 93 and 97 and 2 (r)- Altercation took place inside the house – No offence under Section 93 made out- Offence under Section 93 is made out if accused used any street or public place for threatening, abusive or insulting words or behaviour with intend to provoke breach of peace.

B. Criminal Procedure Code, 1973, Section 468- Framing and amendment of charge – Calendra filed in Court under Sections 93/97 of Delhi Police Act- Magistrate after examining a witness changed the charge to 448 I.P.C. after about 1-1/2 years- periods of limitation for offence under Section 448 I.P.C. is one year- under Section 468 Cr.P.C. charge could not be framed after limitation. AIR 1955Allahabad 318 distinguished.

C. Criminal Procedure Code, 1973, Section 468-

Framing of charge after limitation- case pending before Court- Court framing charge after expiry of limitation period prescribed for the offence- charge could not be framed after limitation.”

But the above cited authority relied by the learned trial Court is not applicable to the facts of the present case. In the above cited authority, occurrence had taken place on 22.9.1987. Qua the incident dated 22.9.1987 Calendra was presented under Sections 93/97 of Delhi Police Act.

In view of all the discussed above, revision is accepted. Order dated 27.2.1996 rendered by CJM, Gurdaspur is set aside. Parties are directed to appear before the learned CJM, Gurdaspur on 18.8.2009 with a direction to the learned CJM, Gurdaspur to proceed as per law.

Record of the trial Court is sent back.

21.7.2009
Anoop

(JORA SINGH)
JUDGE